

**OPC MONITORING OF THE “JUSTICE OR ELSE”
RALLY
OCTOBER 10, 2015**



**REPORT AND RECOMMENDATIONS OF THE
POLICE COMPLAINTS BOARD**

TO

**MAYOR MURIEL BOWSER,
THE COUNCIL OF THE DISTRICT OF COLUMBIA, AND
CHIEF OF POLICE CATHY L. LANIER**

October 23, 2015

POLICE COMPLAINTS BOARD

**Kurt Vorndran, Acting Chair
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I. INTRODUCTION AND OVERVIEW

On Saturday, October 10, 2015, thousands of people from across the nation participated in the “Justice or Else” rally. The rally, which was held on the National Mall and surrounding District streets and organized by Nation of Islam leader Minister Louis Farrakhan, began at 10:00 a.m. and ended at approximately 4:00 p.m.

OPC, pursuant to the agency’s authority under the First Amendment Rights and Police Standards Act,¹ deployed eight members of its staff to monitor MPD’s interactions with protesters throughout the day on Saturday. Because the event took place on both federal and District of Columbia property, a number of federal law enforcement officers, including officers from the U.S. Park Police and the U.S. Capitol Police, were present in addition to MPD officers. Because the Act applies only to the District of Columbia’s police officers, OPC staff primarily concentrated on observing the actions of MPD officers. OPC also took pictures of the rally.² This report summarizes OPC’s observations and makes recommendations based on those observations.³

II. THE ACT AND OPC’S MONITORING EFFORTS

The First Amendment Rights and Police Standards Act of 2004 (“Act”) took effect in the District on April 13, 2005. The Act established and declared the District’s official policy on First Amendment protests. In the District, persons and groups have a right to engage in peaceful First Amendment demonstrations in or on public space controlled by the District – particularly places near the object of the demonstrators’ protest so they can be seen and heard – subject solely to reasonable restrictions designed to protect public safety and to accommodate competing rights of non-demonstrators.⁴ The Act requires MPD to recognize and implement this official

¹ See D.C. Code §§ 5-331.01 to -337.01 (2015). The Act articulates the District of Columbia’s official policy on First Amendment assemblies and, among other things, establishes specific standards of police conduct when handling protests or demonstrations. These standards prohibit MPD from employing crowd control tactics during protests that have the potential to deprive demonstrators of the right to assemble peaceably and express their views.

² See Appendix.

³ The Police Complaints Board (PCB), the governing body of the Office of Police Complaints (OPC), submits this report and recommendations pursuant to its statutory authority to make recommendations to the Mayor, the Council of the District of Columbia, and the Chief of the Metropolitan Police Department (MPD) that, if implemented, may lower the occurrence of police misconduct, and its authority to monitor and evaluate MPD’s handling of First Amendment assemblies. See D.C. Code § 5-1104(d) (2015). PCB would like to acknowledge the assistance of OPC’s staff in conducting the protest monitoring on October 10, 2015, and with preparing this report and recommendations. The agency’s monitoring work was coordinated and supervised by OPC’s executive director, Michael G. Tobin; legal counsel, Nicole Porter; senior investigator, Anthony Lawrence; and investigator, Jessica Rau. In addition, the following OPC staff members served as monitors: Administrative Officer Stephanie Banks, Investigations Manager Robert Rowe, Investigator Daniel Costello-Essig, Investigator Denise Hatchell, and Investigator Catherine Twigg.

⁴ D.C. Code § 5-331.03.

policy by adhering to specific standards of conduct in interacting with persons and organizations engaged in exercising First Amendment rights.⁵

OPC focused its monitoring on Title I of the Act. Title I, known as the First Amendment Assemblies Act of 2004, requires MPD to: 1) permit persons to engage in First Amendment demonstrations even if they have not given notice or obtained approval; 2) seek voluntary compliance with reasonable time, place, and manner restrictions; 3) limit arrest and citation to specific non-compliant demonstrators for whom there is probable cause; 4) refrain from dispersing demonstrators unless there is widespread unlawful conduct; 5) provide multiple audible warnings, a clear dispersal route, and sufficient time to disperse, when dispersal is deemed necessary; 6) refrain from using police lines to surround demonstrators unless there is widespread unlawful conduct; 7) enhance the visibility of officers' names and badge numbers; 8) refrain from using riot gear unless there is a danger of violence; 9) refrain from using chemical irritants to disperse demonstrators unless demonstrators are endangering public safety; and 10) grant the media full access to areas where demonstrations take place.⁶

OPC's overall impression is that MPD performed in a professional and commendable manner and effectively balanced the interests of public safety with the right to free expression. MPD's general interaction with the public appeared cordial, helpful, and respectful. During the rally, MPD officers were alert and attentive, yet unimposing and non-confrontational. MPD officers assisted rally organizers with major logistics and provided help to individuals on the National Mall seeking assistance with smaller directional issues. MPD officers also provided escorts and traffic control for demonstrators conducting organized marches. OPC staff did not observe any instances of MPD officers barring members of the press from any areas in which protest activities were taking place.

Nearly all MPD officers whom OPC staff observed displayed their nameplates and badge numbers. There were some singular instances in which MPD officers' nameplates and badges were not noticeable, despite the Act's requirement that identification be more visible. Specifically, eleven MPD officers who wore yellow-green mesh traffic vests were not wearing their nameplates and badges on the vests. The matter was quickly corrected by MPD, however, once it was brought to the Department's attention. As opposed to MPD officers, the majority of federal law enforcement officers observed by OPC staff, particularly U.S. Capitol Police and U.S. Park Police, had both their name plates and badges obscured by their traffic vests.

⁵ D.C. Code §§ 5-331.05 to -331.17.

⁶ OPC staff was prepared to monitor provisions governing MPD orders to disperse, police lines, mass and individualized arrests, and the use of riot gear and chemical irritants. OPC, however, did not witness any MPD officers engage in these activities. Therefore, those provisions are not the subject of this report.

III. CONCLUSION AND RECOMMENDATIONS

Based on OPC's observations, PCB commends MPD for the manner in which it worked with groups and individuals to facilitate their exercise of First Amendment rights. PCB offers the following recommendations based on its observations:⁷

(1) MPD should continue to emphasize compliance with the First Amendment Rights and Police Standards Act of 2004 among its officers, and ensure that officers are continuing to allow demonstrators to peacefully engage in First Amendment activities with minimal interference from police officers or other protesters. MPD's efforts resulted in a positive experience for both protesters and the police, and should serve as a model for federal agencies and police departments who are tasked with handling First Amendment assemblies.

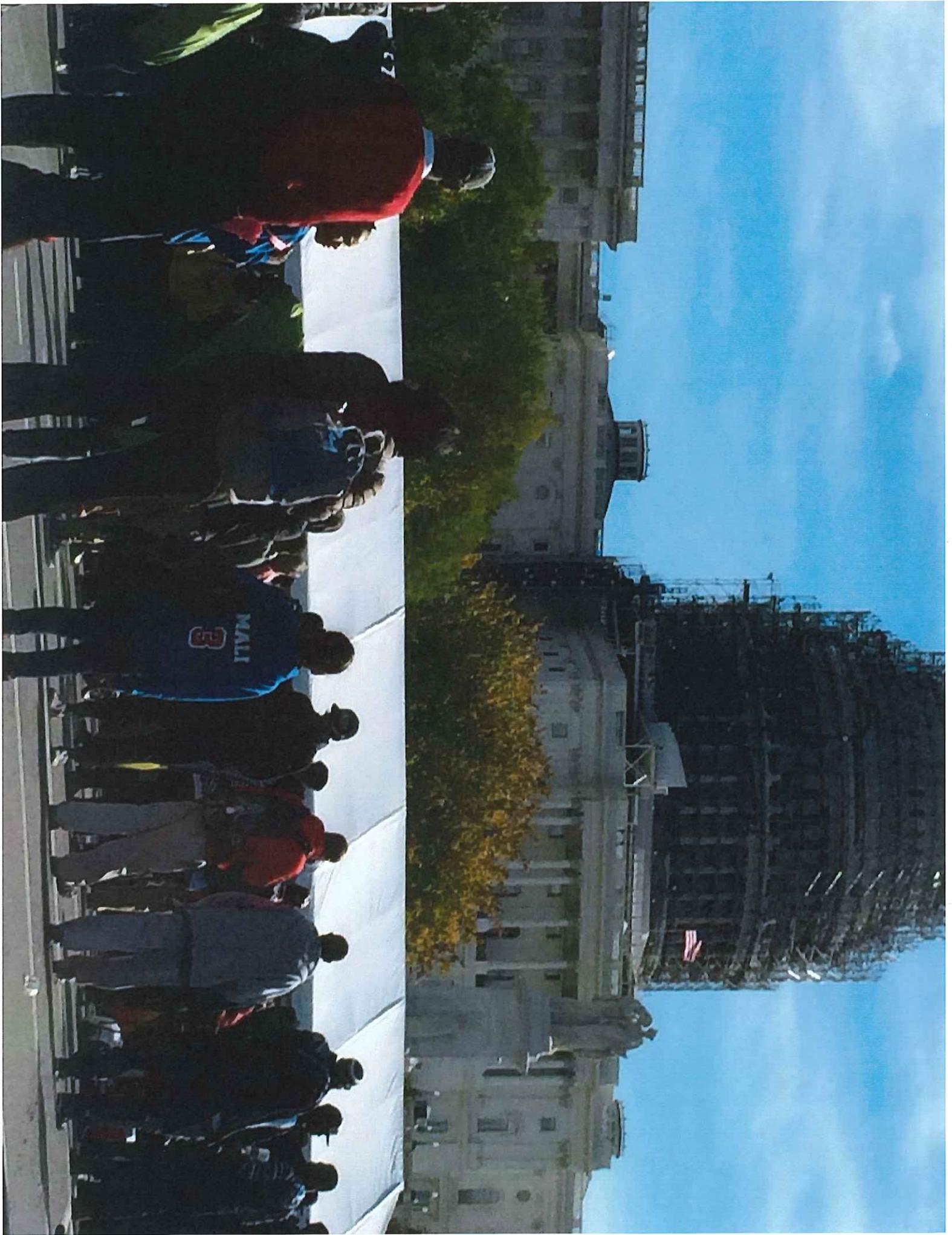
(2) MPD should continue to remind all Department officers handling First Amendment assemblies, and specifically before the start of each event, to make sure that their names and badge numbers are visible on their traffic vests or any other outer coverings.

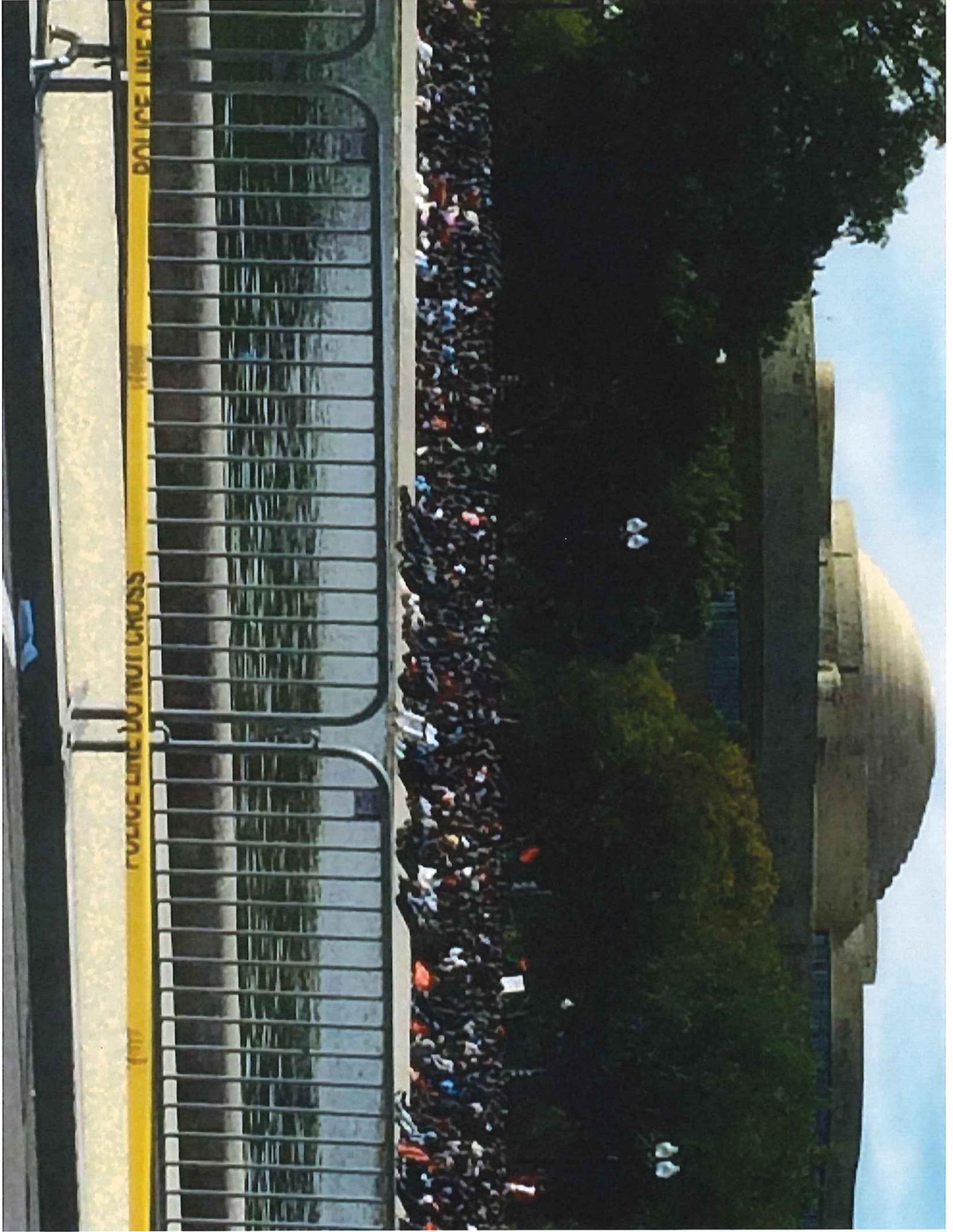
(3) U.S. Capitol Police, U.S. Park Police, and other federal law enforcement agencies handling First Amendment assemblies should consider adopting the best-practices policies of MPD, especially regarding the visibility of their nameplates and badges.⁸

⁷ PCB recognizes and appreciates the cooperation of MPD Police Chief Cathy Lanier, Commander Steven Sund of MPD's Special Operations Division, and Captain Guillermo Rivera, also of MPD's Special Operations Division, in providing assistance to OPC as it planned and carried out its monitoring efforts.

⁸ Although not within the statutory jurisdiction of OPC, it is important that all agencies participating in First Amendment assemblies have uniform and consistent policies in place for their interactions with assembly participants.

APPENDIX







EVENT JUSTICE
FOR PROGRESS

STOP RACIST
VIOLENCE
PEOPLE'S ORGANIZATIONS FOR PROGRESS

STRUGGLE
FOR PROGRESS!
PEOPLE'S ORGANIZATIONS

JUSTICE FOR
KASHAD ASHFORD
AND ALL VICTIMS OF POLICE BRUTALITY
PEOPLE'S ORGANIZATION FOR PROGRESS

JUSTICE FOR
ULTRAVIOLET

RESCUING A NATION
GENERALLY FUNDLE
OUR PROGRAM

NO PARKING
NOW!
FINE









